

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

JOHN MAGUIRE, :
Plaintiff, : Case No. 3:07cv178
vs. : JUDGE WALTER HERBERT RICE
COMMISSIONER OF SOCIAL SECURITY, :
Defendant. :

DECISION AND ENTRY ADOPTING REPORT AND RECOMMENDATIONS
OF UNITED STATES MAGISTRATE JUDGE (DOC. #24) IN THEIR
ENTIRETY; PLAINTIFF'S OBJECTIONS TO SAID JUDICIAL FILING
(DOC. #25) SUSTAINED; PLAINTIFF'S COMPLAINT DISMISSED,
WITHOUT PREJUDICE; OBSERVATION BY THE COURT; JUDGMENT TO
ENTER ACCORDINGLY; TERMINATION ENTRY

Pursuant to the reasoning and citations of authority set forth in the Report
and Recommendations filed by the United States Magistrate Judge, on September
26, 2008 (Doc. #24), as well as upon a thorough review of this Court's file and the
applicable law, said Report and Recommendations are adopted in their entirety.
While perhaps sounding contradictory, Plaintiff's Objections to said judicial filing
(Doc. #25) are sustained.

Defendant's Motion to Dismiss (Doc. #14) is sustained, and the captioned
cause is ordered dismissed, for lack of this Court's subject matter jurisdiction,

without prejudice to refiling, once Plaintiff has exhausted his administrative remedies.

The fact that this Court has dismissed Plaintiff's Complaint, without prejudice to a refiling in this Court, once he has exhausted his administrative remedies, is without prejudice to the Defendant claiming, should such a refiling be made, that Plaintiff's refiled Complaint should be dismissed, due to the untimely attempt to exhaust his administrative remedies and/or his untimely filing of his refiled Complaint.

Should the Plaintiff attempt to refile this Complaint, said refiling is to be had on *in forma pauperis* status, without Plaintiff having to pay a filing fee.

Judgment is to enter in favor of Defendant and against Plaintiff, dismissing the Plaintiff's Complaint, without prejudice to refiling, once he has exhausted his administrative remedies.

The captioned cause is hereby ordered terminated upon the docket records of the United States District Court for the Southern District of Ohio, Western Division, at Dayton.

March 30, 2009

/s/ Walter Herbert Rice

WALTER HERBERT RICE, JUDGE
UNITED STATES DISTRICT COURT

Copies to:

John Maguire, Pro Se Plaintiff

Patrick Quinn, Esq.

John J. Stark, Esq.

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